In The

SUPREME COURT OF THE UNITED STATES

October Term, 1971

No. 71-875

KATHERINE IVIMEY,
Petitioner,

v.

THE PEOPLE OF THE STATE OF NEW YORK

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK: APPELLATE TERM: NINTH AND TENTH JUDICIAL DISTRICTS

Katherine Ivimey
Attorney Pro Se
RFD, New Preston
Connecticut 06777

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1971

No:.....

****

KATHERINE IVIMEY,
Petitioner,

v.

THE PEOPLE OF THE STATE OF NEW YORK

****

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK: APPELLATE TERM: NINTH AND TENTH JUDICIAL DISTRICTS

Katherine Ivimey petitions for a writ of certiorari to review the judgement of the Supreme Court of the State of New York; Appellate Term: Ninth and Tenth Judicial Districts in this case, entered on July 13, 1971.

No opinion was rendered in this case by any court or reviewing body, nor was there given any basis for the judgement. The judgement of the Appellate Term(App.

A., infra) and the certificate denying leave to appeal to the Court of Appeals of the State of New York(App. B., infra), dated by that court on October 7, 1971, are appended hereto.

The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

QUESTION PRESENTED

Whether the rights of a defendant under the Fourth Amendment are violated when the defendant, while operating a motor vehicle, is stopped by a police officer to determine whether or not the defendant is violating any law, when the police officer has no reasonable or probable cause to believe a violation is taking place.

CONSTITUTIONAL PROVISION INVOLVED

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT

Petitioner was convicted after a non-jury trial in the Court of Special Sessions, Town of Clarkstown, Rockland County, New York, of violations of Secs: 401-1 and 306-B of the New York State Vehicle and Traffic Law on counts of operating an unregistered and uninspected motor vehicle.

The motor vehicle operated by the petitioner at the time of her apprehension was owned by a business firm in the State of New Jersey and bore New Jersey license plates, which indicate no date of expiration and are used from year to year, and in the windshield displayed a pink card to indicate that the vehicle could lawfully be operated for a specified period until inspected. Both the license plates and the pink card were in very nearly new condition, for the vehicle had been in storage for several months.

A police officer, without any reasonable or probable cause to suspect anything might be amiss, stopped the petitioner, who was unable to produce the vehicle's registration certificate. Next, he walked around to the other side of the vehicle, according to his own testimony(S.M. 8,9), whereupon he discovered that the period during which the vehicle could lawfully be operated, unless inspected, had expired.

Prior to trial petitioner filed a timely motion for an order suppressing evidence and testimony on the grounds that the peace officer's apprehension was an unlawful interference with her personal liberties as guaranteed by the Fourth Amendment.

Subsequently a bill of particulars was sent to the petitioner in which the police officer, in an attempt to create reasonable grounds for the apprehension, alleges that the license plates on the vehicle appeared too dirty for the impliedly new-looking pink card in the wind-

shield, thereby clearly indicating that he erroneously believed that pink cards were supplied by the State of New Jersey only with new license plates, an implication he himself upset at trial when he stated a circumstance when new pink cards commonly are used with old license plates, thus extinguishing the reasonable grounds he alleged in his bill of particulars. S.M.14.

Evidently aware of the inadequacy of these allegations, the police officer confounded them and the court by then alleging for the first time, later at trial, that the pink card was faded and almost white in places and that this was his reason for stopping the petitioner. Petitioner at once objected to the introduction of these allegations, both because they contradicted those in the bill of particulars by clear implication and because they were not stated as the basis for reasonable cause therein, but was overruled.

Petitioner's motion for an order suppressing evidence and testimony was denied on the grounds that the court heard the police officer testify that he believed there was sufficient grounds for him to stop the petitioner and that in his opinion "***there seemed to be something amiss and for this reason he stopped the car***"(S.M. 26).

REASONS FOR GRANTING WRIT

The defendant's Fourth Amendment rights were violated when she was forced to stop the vehicle she was driving and submit to the police officer's search to determine whether or not she was operating the vehicle illegally, because the police officer had no reasonable or probable cause to believe or suspect anything might be amiss.

In recent years, the Court has established that the Fourth Amendment applies to individuals' in automobiles and to the automobile itself, Lanza v. New York, 370 U.S. 139, Preston v. United States, 376 U. S. 364, Hoffa v. United States, 385 U.S. 293. This protection is even extended to an individual in a taxicab or a telephone booth, Katz v. United States, 389 U.S. 347. Although law enforcement agencies now generally are very conscious of Fourth Amendment rights, they cling to the anachronism that these rights do not as well belong to the ordinary motorist, although this Court has never exempted motorists from the effect of its Fourth Amendment rulings. Curiously, most law enforcement agencies do not even attempt to justify their disregard of Fourth Amendment rights as they apply to the motorist, and continue to harass motor vehicle operators without any pretense of reasonable or probable cause. The irony is that one caught with contraband or unlicensed hand weapons at a typical roadblock will and can not be prosecuted, but there is no hesitancy to indict him for an expired drivers license or the like.

This Court has often repeated that the scope of a search must be strictly tied to, and justified by, the circumstances which render its initiation permissible, Chimel v. California, 395 U.S. 752, a search unlawful at its inception is not validated by what it turns up, Wong Sum v. United States, 371 U.S. 471, and vindicated anticipation of what an illegal search may reveal does not validate a search otherwise illegal, Lustig v. United States, 338 U.S. 74. A police officer must be able to point to specific and articulate facts, not mere inarticulate hunches, to justify an intrusion, and the information(in this case the bill of particulars) upon which

the police action is predicated must be specific, complete and not in conflict with the police officer's testimony, Terry v. Ohio, 392 U.S. 1.

The detention of the defendant was a search within the meaning of the Fourth Amendment prohibition, whether this intrusion was or was not a mere investigatory detention, Davis v. Mississippi, 394 U.S. 721. Moreover, for the purposes in this case, the defendant was arrested when her progress was interrupted and her liberty of movement restricted by the police officer, Henry v. United States, 361 U.S. 98, and what transpired thereafter is irrelevant to the narrow issue before the Court, unless the police officer had "reasonable or probable cause to believe" that he would find evidence of a violation before he began his warrantless search, Dyke v. Taylor Implement Mfg. Co., 391 U.S. 216.

No evidence has been presented by the police officer that he had any reasonable or probable cause to intrude upon the privacy of the defendant, as reinforced by his own testimony at trial, which was not only inconclusive, but inconsistent with his own bill of particulars.

The judgement of the trial court was brought before the Appellate Term on an affidavit of errors and more complete arguments presented there in briefs.

Respectfully submitted,

CATHERINE IVIMEY
Attorney Pro Se
NFE, New Preston
Connecticut 06777

Appendix A

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM
NINTH AND TENTH JUDICIAL DISTRICTS

No. 115(R)--------May Term, 1971

Decided July 13, 1971

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

v.

KATHERINE IVIMEY,

Appellant.

Before:
Pittoni, McCullough and Farley, Justices

The above named Katherine Ivimey, the defendant herein, appealed to this Court from judgements of the Court of Special Sessions, Town of Clarkstown, Rockland County, rendered on the 10th day of December, 1970, after a trial convicting her of a violation of Sections 401-1 and 306-B, Vehicle and Traffic Law, and imposing sentence as follows:

Section 401-1 - Fined $25.
Section 306-B - Fined $10.

and the said appeal having been submitted by Katherine Ivimey, in person for the appellant, and submitted by Mr. Herman J. Van der Linde, of counsel for the respondent, and due deliberation having been had thereon;

It is hereby ordered and adjudged that the judgements of conviction so appealed from be, and the same are hereby affirmed.

Appendix B

STATE OF NEW YORK: COURT OF APPEALS

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

against

KATHERINE IVIMEY,
Defendant-Appellant.

I, FRANCIS BERGAN, Associate Judge of the Court of Appeals of the State of New York, do hereby certify that, upon application timely made by the above named appellant for a certificate pursuant to Sec. 520 of the Code of Criminal Procedure, and upon the record and proceedings herein, there is no question of law presented which ought to be reviewed by the Court of Appeals and permission to appeal is hereby denied.

Dated at Albany, New York
October 7, 1971